BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MICHAEL S. JORDAN	)	
Claimant	)	
VS.	)	
	)	Docket No. 253,664
PYLE CONSTRUCTION	)	
Respondent	)	
AND	)	
	)	
CONTINENTAL WESTERN CASUALTY	)	
Insurance Carrier	)	

ORDER

Respondent appeals a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes. The Order, dated May 17, 2000, grants claimant medical treatment.

ISSUES

The appealed Order requires respondent to pay claimant's medical expenses. Claimant was injured as a result of a fight with a coworker that arose over payment of a motel charge for a microwave. The issue on appeal is whether claimant's injury arose out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order should be affirmed.

At the time of claimant's injury he was working for respondent on a construction project in Oklahoma. Claimant and a coworker shared a room while working on the project and disagreed about who was responsible for paying the $2 the motel charged for a microwave oven. On the morning of claimant's injury, February 23, 2000, the claimant, the coworker, and their supervisor went to the break room for coffee. While there, the coworker threatened and pushed claimant. A fight ensued. Claimant injured his hand in this initial altercation but managed to subdue the coworker. Once claimant had the coworker under control, claimant's supervisor suggested claimant let the coworker up and go back to the

job. Claimant got up and started to walk to the door, but the coworker pulled out a knife and cut claimant on the head and face. In the process, claimant fell and hit his back on a table.

An injury arises out of employment when it arises out of the nature, conditions, obligations, and incidents of the employment. *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984). Injuries from a fight with a coworker are recognized as compensable when: (1) the employer had reason to anticipate that injury would occur if the claimant and coworker continued to work together; (2) the fight results from a disagreement over the conditions or incidents of the job; or (3) the injuries are exacerbated by a hazard from the employment. *Baggett v. B & G Construction*, 21 Kan. App. 2d 347, 900 P.2d 857 (1995); *Harris v. Bethany Medical Center*, 21 Kan. App. 2d 804, 909 P.2d 657 (1995); *Springston v. IML Freight, Inc.*, 10 Kan. App. 2d 501, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).

In this case, the ALJ gave two reasons for finding the injury compensable. She considered the dispute to be one that arose from the incidents of employment and she found the employer had reason to anticipate the assault. The Board concludes the evidence does not establish respondent had reason to anticipate the initial assault. The evidence indicates claimant and the coworker had some past disagreements but does not establish the disagreement to be the type that would lead respondent to anticipate that injury would occur if the two continued to work together. The evidence also does not establish respondent's knowledge of the disagreement. But the Board agrees the fight arose from the incidents of employment. The two workers were, as part of their job, required to stay out of town and were assigned to room together. Disputes that arose from that arrangement arose from the incidents of employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Nelsonna Potts Barnes on May 17, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 2000.

BOARD MEMBER

c: David H. Farris, Wichita, KS
Mark A. Buck, Topeka, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director